In Re:	CHAPTED 12 CACI
Charles C. Anikwue	CHAPTER 13 CASE
SSN XXX-XX-0881	
Mary F. Anikwue	

CASE NO. 04-50889 RJK

Debtor.

Faye M. Anikwue SSN XXX-XX-3413

#### NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

- 1. LaSalle Bank National Association as Trustee for certificateholders of EMC Mortgage Loan Trust 2003-B, Mortgage Pass-Through Certificates, Series 2003-B, through its servicing agent, EMC Mortgage Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.
- 2. The Court will hold a hearing on this motion on November 29, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 2, Fourth Floor of the above entitled Court located at U.S. Courthouse, 515 West First Street, Duluth, Minnesota.
- 3. Any response to this motion must be filed and delivered not later than November 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than November 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
- 4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The

petition commencing this case was filed on August 4, 2004. The case is now pending in this Court.

- 5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).
- 6. Debtor is indebted to Secured Creditor in the original principal amount of \$166,000.00, as evidenced by that certain Promissory Note dated February 6, 1995, a copy of which is attached hereto as Exhibit "A", together with interest thereon.
- 7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated February 6, 1995, executed by Charles Chike Anikwue and Mary M. Anikwue, recorded on February 10, 1995, as Document No. 0458414, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Halifax County, North Carolina and is legally described as follows to-wit:

TRACT ONE: All that certain lot or parcel of land together will all improvements thereon, in the City of Raonoke Rapids, Halifax County, North Carolina, designated as Lot No. ONE HUNDRED FOUR (104) according to the "Plat Showing Part I, Section V, Becker Farm, owned by Becker Farms, Inc." made by Cyril C. Waters. Registered Surveyor, under date of October 9, 1977, and of record in the Office of the Register of Deeds for said Halifax County in Map Book 18 at Page 64, and being the identical real property conveyed to Charles Chike Anikwue et ux by deed dated December 14, 1981, recorded in Book 1156, Page 23, Halifax Public Registry. Reference to said map and deed is hereby made for greater certainty of description.

TRACT TWO: Beginning at a point in the northern right of way of Still Forest Place, said beginning point being the southeast corner of Lot No. 103 according to the plat showing part I, Section V, Becker Farms, Inc. by Cyril C. Waters, Registered Surveyor, of record in Map Book 18, Page 64, Halifax Public Registry. Thence along the northern right of way of Still Forest Place, N: 88° 46′ W. 2.90 feet to a new iron pipe; thence a new made line through the property of the Grantor N. 13° 35′ E 15.35 feet to a new iron pipe in the dividing line between Lots 103 and 104 on the map hereinabove referred to; thence along said dividing line S. 2° 45′ W. 15.0 feet to the point of beginning and being a triangular shaped tract at the southeast corner of said Lot 103; reference is also made to "Plat Showing a Portoin of Lot 103, Part I, Scetion V, Becker Farm Conveyed to Charles Chike Anikwue and Fary Miller Anikwue by Russell R. Lucas" by Cyril C. Waters, Registered Surveyor, under date of December 24, 1988 and being a portion of that property conveyed to Charles Chike Anikwue et

ux by deed of Russell R. Lucas et ux dated January 10, 1989 and recorded in Book 1442, Page 21, Halifax Public Registry.

TRACT THREE: That certain tract or parcel of land lying and being situated in the City of Ranoke Rapids, Roanoke Rapids Township, Halifax County, North Carolina, and being more particularly described as follows: BEGINNING at a point on the edge of the right of way for Still Forest Place, said beginning point being the southeast corner for Lot No. 104 and the northwestern corner for Lot No. 105, according to plat showing Part I, Section 7, Becker Farms owned by Becker Farms, Inc, by Cyril C. Waters, R.S. of record in Map Book 15, Page 64, Halifax Public Registry; thence from said beginning point along the original lot line between Lots 104 and 105 N. 55° 15' E. 116.7 feet to a point; thence S. 36° 07' E. 10 feet to a point; thence along a new made line S. 57° 44' W 116.9 feet to a point along the edge of the right of way for the cul-de-sac for Still Forest Place; thence along the edge of the right of way for Still Forest Place five (5) feet in a northwesterly direction along a curve to the left having a radius of fifty feet to the point of beginning, and containing 874 square feet according to a plat titled "Plat Showing Property Conveyed to Charles Chike Anikwue and wife, Faye Miller Anikwue by Marvin Lasaiter, Jr." dated December 19, 1990, and done by Cryil C. Waters, R.S. reference to said plat being hereby made for greater certainty of description.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

- 8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.
- 9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of October 19, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of August, 2003 through October, 2004, inclusive, in the amount of \$1,797.81 each; accruing attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.
- 10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$194,000.00 subject to Secured Creditor's mortgage in excess of \$205,071.26.

The property is also subject to a lien in favor of Athugla Bunch in excess of \$15,000.00.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to State law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under State law and for such other relief as may be just and equitable.

Dated this 19th day of October, 2004.

#### WILFORD & GESKE

By /e/ James A. Geske

James A. Geske Attorneys for Secured Creditor 7650 Currell Blvd., Suite 300 Woodbury, MN 55125 651-209-3300 Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

ADJUSTABLE RATE NOTE (6 Month LIBOR Index - Pats Caps)

. No. W.ANIO968X TOBS No. 959960577

38800458414

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT, THE NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AY ANY ONE TIME AND THE MINIMUM AND MAKINGM RATE I MUST PAY.

FEEQUARY 6 .19 95

IRVINE 

CALIFORNIA

105 STILL FOREST TIACE, ROANOKE RAPIDS, NORTH CAROLINA 27870 Property Address;

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I premise to pay U.S. \$ 166,000.00 (this amount is called principal'), plus interest, to the order of the Landar. The Landar is QUALITY MORIGAGE USA, INC., A (this amount is called CALIFORNIA CORPORATION I understand that the Lender may transfer this Note. The Lander or anyone who takes this Note by transfer and who is

antitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpeld principal until the full amount of principal has been paid. Interest will be calculated on the backs of a 12-month year and a 30-day month. I will pay interest beginning at a yearly rate of

12.750 %. The interest rate I will pay will change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and other my default described in Section 7(B) of title Note,

#### 2. PAYMENTS

(A) Time and Piace of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments on the first day of each month beginning on APRIL 1.

1. 1995 I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may new unfor this Note. If, on MARCH 1 . 2025 , I still one amounts under this Note, I will pay those amounts in full on that date, which is called the 'mattrity date,' I will make my monthly payments at LCMAS MORTGAGE USA, P.O. BOX 660319, DALLAS, TEXAS 75256 0319

or at a different piece if required by the Note Holder.

US) Amount of his initial Manthly Payments
Rech of my initial manthly payments will be in the smount of U.S. \$ 1,803,91 . This amount may change.

Changes in my monthly payment will refined changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in scourdance with Section 4 of this Note.

(D) Application of Payments

Paymanus received by the None Holder will be applied in the following order: (i) insurest due under this Note; (ii) principal due under this Note; (iii) amounts payable under paragraph 2 of the Security instrument (defined below); (iv) propayment obserges due under this Note; and (v) into charges the under this Note.

#### 4. Interest rate and midnifily payment changes

(A) Change Date:

The interest rate I will pay may change on the first day of SHPTHMHHR. . 1.995
on that day every 6th month thereafter. Bash date on which my interest rate could change is called a "Change Date."

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of Beginning wan into first Change 17ste, my inswest rate with in these on an innex. The "these, is use everage or interback offered rates for sixmouth United States deliar deposits in the London market based on quotations of major banks ("LIBOR"), as published in the Western Edition of The Wall Street Lemma. The most recent index figure available as of the dam 45 days batter such Change Date is called the "Current Index." If the Index is no longer available, the Note Holder will cheese a new index which is based upon comparable information. The Note Holder will give use notice of this choice.

(C) Calculation of Change

Before such Change Date, the Note Holder will executate my new interest rate by adding SIX AND

260/1000 percentage points ( 6,260 %) (the "Margin") to the Current Index. The Note

Holder will then round the result of this addition to the measure one-algirit of one percentage points (0,124%). Subject to the limits stated in Section 4(D) below, the rounded amount will be my new interest rate until the next Change Date. The Note Molder will then determine the amount of the monthly payment that would be sufficient in repay the unpeld principal that I am expected to one at the Change Dant in full on the materialy date at my new interest rate in substitutibily equal payments. The result of this selection will be the new emount of my monthly payment.

(D) Limits on Interest Rate Charges

My interest rate will never be increased or decreased on any single Change Dete by more than ONE AND 000/1000 percentage point ( 1.000 %) from the rate of interest I have been paying for the preceding six months. In addition, my interest rate will never be greater than 1.9.250 % or less than 1.2.750 %.

EXHIBIT

**☑** 002/006

PREPARED BY

. . GUALITY MORTGAGE USA, INC

RECORDING REQUESTED BY: OUALITY MORTGAGE USA, INC. WHEN RECORDED, MAIL TO:

QUALITY MORTUAGE URA, INC. 16802 ABTON STREET IRVINE, CALIFORNIA 92714 Application No. W.ANI0966x Loan No. 959960577

38800458414

FILED FOR BEGINNING AND RECORDS # SOURCE PA S.S. M BOW

RF265

SPACE ABOVE THE LINE FOR RECORDING

### DEED OF TRUST

NOTICE: THE ADJUSTABLE BATE NOTE SECURED BY THIS DIED OF TRUST CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST BATE AND MORTHLY PAYMENT AMOUNT. THE ADJUSTABLE RATE NOTE ALSO LIMITS THE AMOUNT THAT THE DETEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MINIMUM AND MAXIMUM INTEREST RATE THAT THE BORROWER MUST PAY.

THIS DEED OF TRUST ("Security Instrument") is made on FHRRUARY 6 The trace is CHARLES CHIKE ANIKWUE AND MARY M. ANIKWUE

, 19 95

("Morrower").

The truste & QUALITY TRUSTEE SERVICES, INC., A MISSOURI CORPORATION

The beneficiary is QUALITY MINTGAGE USA, INC., A CALIFORNIA CORPORATION

("Trueso").

which is organized and existing under the laws of the same of CALIFORNIA stdwarfs 16800 RETON STREET
IRVINE, CALIFORNIA 92714

. and whose

("Lender").

Surrower owes Lander the principal room of ONE HUNDRED SIXTY SIX TROUSAND AND

Dollars (U.S. \$ 166, 000, 00 ). This daint is evisioned by Borrower's note dated the same date as this financing Instrument ("Note"), which provides for moneity payments, with the full dairs, if not paid service, due and payable on MARCH 1 2025 . This financing instrument secures to Lander: (a) the repayment of the dairt evidenced by the Note, with interest, and all revewels, extensions and monthleadons of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to product the scontriby of this Scoutty Instrument; and (d) the performance of Borrower's sevents and approximate under this Scoutty Instrument and the Note; the Scoutty Instrument and the Note; the Note of Scoutty Instrument and the Note of Scoute of Scoutty Instrument and Instrument Instrum the Note. For this purpose, Burroway intercounty grants and conveys to Trustee, in trust, with power of sale, the following described property located in HRLIPAE County, North Carolina: LEGAL DESCRIPTION ATTACHED EMBETO AND MADE A DART HEREOF AS EXHIBIT "A".

which has the address of 105 STILL BORNST PLACE, ROANGEE RAPIDS
North Carolina 27870 ("Property Address");

TOGETHER WITH all the improvements now or humafor created on the property, and all casemanns, apparisonness, and firmules now or herestler a part of the property. All of the foregoing benefits to in this Security Instrument, All of the foregoing benefits to in this Security Instrument, as the "Property."

ROBROWER. COVENANTS this Bestween is instally select or the origin hereby conveyed and has the right to great and occurry the Property and that the Property is measurabled, empty for estimated of record, Bostower versions and will defined generally the title to be Property against all claims and demands, subject to any commitments of record.

The instrument was proposed by: E. LAMBROPOULOB AND V. PHAM, 16800 ASTON STREET, IRVINE, CALIFORNIA 92714

**EXHIBIT** 

→ Diana Waletzko **2**1003/006

6/14/2004 10:27

PAGE 3/11

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. Loan No. : 959960577

**EMC** 

FEBRUARY 6, 1995

Property Address: 105 STILL FOREST PLACE ROANOKE BAPIDS, NORTH CAROLINA 27870

#### EXPLAIT "A"

#### LEGAL DESCRIPTION

PRACE CAR: All that combain hat or person of land tapather with all improvements thurses, in the clay of Roseske tapates, falifies County, North Caraline, Assignated to Inclose, for the County of th

That This implement a point at the perthern right of any of Fill Perter Plans, and beginning which being the contheins werenr of the th. 103 accepting at plant whosing what I, Section V. heater Penns. Inc. by Covil C. Uniter, Registered Sarveyor, of record is may note it. Reas th. Raining Sublic Switchery. They are the two contheins which at two of Skill'systems Plans, N. 62° of C. 130° foot to a new iron pine; there a new iron pine is the property of the Granter to a new iron pine; there are not not to a new iron pine is the principle of the Granter N. 17° 75° E. 15.35 foot to a new iron pine is the dividing line between Lots 105 and 164 on the new bestimbour referred to; there a sing said dividing line 5. 3° 45° N. 15.0 feel to the point of being the indig a crinopilar absord tract at the scuttered of said lot 102; reference is also made to "First Shouter a Portion of Lot 103, Sure I, Sockion V. Refer year Conveyed to Charles Colle Allegant and Rays Allier declared by America Portion of that the perfect of the control of the Colle Allies and the property conveyed to Charles Colle Allies and the property conveyed to Charles Colle Allies are not been a perfectly conveyed to Charles Colle Colle Allies are not been a perfectly conveyed to Charles Colle Colle Allies are not been lead, Suga 11. Railfay Publics Collegant.

That's limits that certain exact or parcel of land lyide and heigh athless in the City of Bearder Regide, Sometic Bearder Develop, Bulting Gomey, North Carolina, the City of Bearder Regide, Sometic Bearder, Bullions, Builton Gomey, North Carolina, and being not personal style described as follows: Expeditive at 6 white the edge of the right of way for Stall Parcel Blace, said beginning polar being the southers corner for Los Me. 105 and the besthestern second for Los Me. 105, secunity to plan absence part 1, Section V, Beater Papes dend by Socker Papes, 100., by Cyril G. Marcey, E.S. of Federal Is pap Sock 16, Page 64, indiffer Pathic Registry; thouse from and brightning point clark the samples I like between Legistry; thouse from and brightning point glass as a society thouse 10. 59° 15° 11. 116.7 feet 6s a society thouse 10. 6° 0° E. 10 feet to a point; thouse slong a section for men and the stall Papes of the Stall Papes of the Stall Papes of the Stall of Stall Papes (Stall Papes) for Stall Papes (Stall Papes) for the constant of the Stall of the Stall of the Stall Papes (Stall Papes) for Stall P

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PAGE 8/11 RightFax

BOOK 1630 PAGE 24

**EMC** 

38800458914

ercircio and deliver to Legier a Loss Descriptor in form and comiton identical to, and to serve as a replanement of, the test, smites, damnyed, or multished Lots Decument and such replevement shall keys me same face in screet as the lost, strice, destroyed, or ravillated Loss Decuments, and may be treated for all purposes as the original cupy of such Loan Document.

for all purposes at the original copy of such Loan Decoment.

22. Assignment of Rusta. As additional accurity becomes, Burrower harders assigns to Lander (no copie of the Property. Burrower shall have been collect and retain the resus of the Property as they become due and payable provided Lander has not structured in rights to require immediate payment in full of the scape accuracy by this deterity instrument and Recovery has not structured the Property.

25. Lagitation Affecting Lander's Rights. If exactness or explication of applicable have has the effect of readering any provision of the Note or this deposity Instrument uncertained according to its means. Lander, at its optical, they require instruction payment in full of all some second by this Security Instrument, and work burston any loveles my restords by paragraph 2; of this Security Instrument.

If this box is checked, the following paragraph 40 is agreed in by Herrowen;

40. Owner-Goungham; of Beauthy Eupparty. As na information for Lander to take the form reported by the Security Instrument, Borrower has proposed in Lander that the Property will be encoupled by Borrower within sixty (60) days following renordation of the Security Instrument and during the twelve (12) much period impediately following recordation of the Security Instrument on Borrower's printery residence. Secrees estimately full Lander would not have agreed to make the loan exhibited by the Note of those matrices by this Security Instrument if the Property were not to be owner-complet, and (b) that the interest case set theth on the mast of the Note and other terms of the loss were determined as a result of Begrower's representation that the Property would be commonographed. Borrower further acknowledges that, among other things (i) purchasers of tomas (methoding agencies, amondations and comparations created by the federal and state governments for the purchase of loune) typically require that properties (including agencies, amoulations and comparations operated by the federal and state governments for the properties of teams) typically require that properties according boats acquired by such purchases be covern-occupied, and will reject for purchase loops for which persetty properties can put overn-occupied, (ii) Lambur's shillify to sed a load or an interest in a load to the nests of holding and estimatering a form are often higher in the case of a load in this occurring property is not overn-occupied, (iii) the risks involved and the nests of holding and estimatering a form are often higher in the case of load in which the according property is not overn-occupied, and (by it and what lands under the security property is not occurred property. Lands: typically makes such a load on beams different from those of loads wound by overn-occupied properties. Ascordingly, is the event that (c) within sixty (60) days minoring properties of the Security Institutes, and the load of loads are occurred to the southing the property live at least to the loads of loads instituted (1) months immediately following recordation of the Security Instituted, Loader may declare at some secured by this South's following the following recordation of the Security Instituted, Loader may declare at some secured by the Security Instituted to any right of Loader under this Security Instituted to any right of Loader under this Security Instituted to any right of Loader under this Security Instituted to a spring under this Security Instituted to a spring under this Security Instituted to a least of least to leave the law. under take Security Instrument or allowed by law.

41. Military to this Security Instrument.

45. Either to the Sampley Indicapers. If was by more riches are exactled by Barrower and special injection with this Security Instrument, the covernants and appointment of such such riches and in the first state of this Security Instrument and supplication the covernants and surrements of this Security Instrument as if the riches(s) were a part of this Security Instrument.

[Check applicable box(re)]

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[ ] Planned Unit Dovelepment Rider [ ] Rider A	[ ] Conseniatora (g.) Rider B		] I-t Punity Ride; ] Rider C	
BY MICHING HELOW, Recrewer accepts and agrees to t Recrewer and recorded with it. Witnesses:	he terms and payou			,
· · · · · · · · · · · · · · · · · · ·	<b>–</b> ,	CHARLES CHIKE AN	minue	(FÉAL) Hansons
	-	MARY M. ANTROUS	<u> </u>	MACHINE (ARAI.)
	-	Han 1 M.	Gode was	(SEAL) Bossesse
	_		<del>···</del> (	Hottowar (MEAL)
	<del>-</del>			(BBAL) Bonder
				(SEAL) Berrower

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38800468414 BOOK 1630 PACE

STATE OF NORTH CAROLINA WARE COUNTY

on this, the <u>Ath.</u> day of <u>FEBRUARY</u>, 1995, before me, a Notary Public for the county and state aforesaid, personally appeared <u>CHARLES CHIKE ANIXAGE AND MARY M. ANIXAGE</u> Known to me (or satisfactorily proven) to be the person(s) whose name is subscribed to the within instrument and acknowledged that they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires: My Commission Expires 4286

foregoing certificate depth foregoing certificate of Notary (jes) Public is (are) duly registered at the date and time and in the book and page shown on the first page hereof.

Assistant Deputy Register of Deeds

North Carulina, Halling County The foregoing certificate of aveni C. Borlean a Notary Fubile of Water County is certified to be correct. This LO day of .

Judy Evans-Barbes 😂 Register of Deeds Hellax Co.

10/19/2004 13:41 IFAX lwilford@wilfordgeske.com → Diana Waletzko ② 006/006 EMC 6/14/2004 10:27 PAGE 11/11 RightFax

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In Re:		CHAPTER 13 CASE
Charles C. Anikwue		CHAPTER 13 CASE
SSN XXX-XX-0881		
Mary F. Anikwue		
Faye M. Anikwue		
SSN XXX-XX-3413		
		CASE NO. 04-50889 RJK
	Debtor.	

# MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

#### ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

- 1. As of October 19, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of August, 2003 through October, 2004, in the amount of \$1,797.81 each; accruing attorneys fees and costs of \$700.00.
  - 2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE

PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the

property is in excess of the value of the property. The value of the property as scheduled by Debtor is

\$194,000.00 subject to Secured Creditor's mortgage in excess of \$205,071.26.

The property is also subject to a lien in favor of Athugla Bunch in excess of \$15,000.00.

The burden is on Debtor to establish that this property is necessary to an effective reorganization.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for

cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also

entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in

the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent

with the attached proposed Order.

Dated this 19th day of October, 2004.

WILFORD & GESKE

By <u>/e/ James A. Geske</u>

James A. Geske Attorneys for Secured Creditor 7650 Currell Blvd., Suite 300 Woodbury, MN 55125

651-209-3300

Attorney Reg. No. 14969X

(= D	CHAPTER 13 CASE
in Re:	CIM TER IS CASE

CASE NO. 04-50889 RJK

Charles C. Anikwue SSN XXX-XX-0881 Mary F. Anikwue Faye M. Anikwue SSN XXX-XX-3413

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AFFIDAVIT OF TINA BENTON

Debtor.

Tina Benton, being first duly sworn on oath, deposes and states:

- That she is the Bankruptcy Specialist of EMC Mortgage Corporation.
- 2. LaSalle Bank National Association as Trustee for certificateholders of EMC Mortgage Loan Trust 2003-B, Mortgage Loan Pass-Through Certificates, Series 2003-B, through its servicing agent, EMC Mortgage Corporation, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated February 6, 1995, executed by Charles Chike Antikwue and Mary M. Anikwue, recorded February 10, 1995, as Document No. 0458414. The property is located in Halifax County, North Carolina and is legally described as follows, to-wit:

TRACT ONE: All that certain lot or parcel of land together will all improvements thereon, in the City of Raonoke Rapids, Halifax County, North Carolina, designated as Lot No. ONE HUNDRED FOUR (104) according to the "Plat Showing Part I, Section V, Becker Farm, owned by Becker Farms, Inc." made by Cyril C. Waters. Registered Surveyor, under date of October 9, 1977, and of record in the Office of the Register of Deeds for said Halifax County in Map Book 18 at Page 64, and being the identical real property conveyed to Charles Chike Anikwuc et ux by deed dated December 14, 1981, recorded in Book 1156, Page 23, Halifax Public Registry. Reference to said map and deed is hereby made for greater certainty of description.

TRACT TWO: Beginning at a point in the northern right of way of Still Forest Place, said beginning point being the southeast corner of Lot No. 103 according to the plat showing part I, Section V, Becker Farms, Inc. by Cyril C. Waters, Registered Surveyor, of record in Map Book 18, Page 64, Halifax Public Registry. Thence along the northern right of way of Still Forest Place, N: 88° 46' W. 2.90 feet to a new iron pipe; thence a new made line through the property of the Grantor N. 13° 35' E 15.35 feet to a new iron pipe in the dividing line between Lots 103 and 104 on the map hereinabove referred to; thence along said dividing line S. 2° 45' W. 15.0 feet to the point of beginning and being a triangular shaped tract at the southeast corner of said Lot 103; reference is also made to "Plat Showing a Portoin of Lot 103, Part I, Scetion V, Becker Farm Conveyed to Charles Chike Anikwuc and Fary Miller Anikwue by Russell R. Lucas" by Cyril C. Waters, Registered Surveyor, under date of December 24, 1988 and being a portion of that property conveyed to Charles Chike Anikwue et ux by deed of Russell R. Lucas et ux dated January 10, 1989 and recorded in Book 1442. Page 21, Halifax Public Registry.

TRACT THREE: That certain tract or parcel of land lying and being situated in the City of Ranoke Rapids, Roanoke Rapids Township, Halifax County, North Carolina, and being more particularly described as follows: BEGINNING at a point on the edge of the right of way for Still Forest Place, said beginning point being the southeast corner for Lot No. 104 and the northwestern corner for Lot No. 105, according to plat showing Part I, Section 7, Becker Farms owned by Becker Farms, Inc, by Cyril C. Waters, R.S. of record in Map Book 15, Page 64, Halifax Public Registry; thence from said beginning point along the original lot line between Lots 104 and 105 N. 55° 15' E. 116.7 feet to a point; thence S. 36° 07' E. 10 feet to a point; thence along a new made line S. 57° 44' W 116.9 feet to a point along the edge of the right of way for the cul-de-sac for Still Forest Place; thence along the edge of the right of way for Still Forest Place five (5) feet in a northwesterly direction along a curve to the left having a radius of fifty feet to the point of beginning, and containing 874 square feet according to a plat titled "Plat Showing Property Conveyed to Charles Chike Anikwue and wife, Faye Miller Anikwue by Marvin Lasaiter, Jr." dated December 19, 1990, and done by Cryil C. Waters, R.S. reference to said plat being hereby made for greater certainty of description..

That she has reviewed the account records relating to the Anikwue mortgage loan, account no. 5734801.

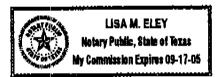
That as of September 17, 2004, the following amounts were owing on this account: 4.

Unpaid Principal:	\$158,363.23
Interest through September 17, 2004	24,561.64
Attorney's Fccs:	700.00
Non-Escrow Advances:	1.292.60
Other Fccs:	25.00
Escrow Balance:	20,128.79
TOTAL:	\$205,071.26

That the mortgage loan is delinquent for monthly mortgage payments for the months of August, 2003 5. through September, 2004 in the amount of \$1,797.81 each.

This affidavit is given in support of the motion of LaSalle Bank National Association as Trustee for certificateholders of EMC Mortgage Loan Trust 2003-B, Mortgage Loan Pass-Through Certificates, Series 2003-B, through its servicing agent, EMC Mortgage Corporation for relief from the automatic stay.

Subscribed and sworn to before me



In Re:		
		CHAPTER 13 CASE
Charles C. Anikwue		
SSN XXX-XX-0881		
Mary F. Anikwue		
Faye M. Anikwue		
SSN XXX-XX-3413		
		CASE NO. 04-50889 RJK
	Debtor.	UNSWORN DECLARATION FOR PROOF OF SERVICE
office address at 7650 Cur served the annexed Notice for Relief, Affidavit of Tin	rell Blvd., Suite 300, Woo e of Hearing and Motion fo ha Benton, and proposed O n envelope with first class in	ske, attorneys licensed to practice law in this Court, with dbury, Minnesota, declares that on October 19, 2004, I or Relief from Stay, Memorandum in Support of Motion order to each person referenced below, a copy thereof mail postage prepaid and depositing the same in the post them as follows:
Charles C. Anikwue		Michael J. Farrell
Mary F. Anikwue		PO Box 519
PO Box 204		Barnesville, MN 56514
Hibbing, MN 55746		
		U.S. Trustee
Peter C. Greenlee		1015 U.S. Courthouse
Greenlee Law Office		300 South 4 <sup>th</sup> Street
PO Box 1067		Minneapolis, MN 55415
Twig, MN 55791		
Athugla Bunch		
c/o James Craven Esq		
PO Box 1366		
Durham, NC 27702		
And I declare, und	ler penalty of perjury, that	the foregoing is true and correct.
Dated this 19th day of _	October , 2004.	
		/e/ Diana Waletzko
		Diana Waletzko

In Re:	CHADTED 12 CASE
Charles C. Anikwue	CHAPTER 13 CASE
SSN XXX-XX-0881	
Mary F. Anikwue	
Faye M. Anikwue	

CASE NO. 04-50889 RJK

Debtor. ORDER

SSN XXX-XX-3413

Trustee for certificateholders of EMC Mortgage Loan Trust 2003-B, Mortgage Pass-Through Certificates, Series 2003-B, through its servicing agent, EMC Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on November 29, 2004, at U.S. Courthouse, 515 West First Street, Duluth, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated February 6, 1995, executed by Charles Chike Anikwue and Mary M. Anikwue, recorded on February 10, 1995, as Document No. 0458414 covering real estate located in Halifax County, North Carolina, legally described as follows, to-wit:

TRACT ONE: All that certain lot or parcel of land together will all improvements thereon, in the City of Raonoke Rapids, Halifax County, North Carolina, designated as Lot No. ONE HUNDRED FOUR (104) according to the "Plat Showing Part I, Section V, Becker Farm, owned by Becker Farms, Inc." made by Cyril C. Waters. Registered Surveyor, under date of October 9, 1977, and of record in the Office of the Register of Deeds for said Halifax County in Map Book 18 at Page 64, and being the identical real property conveyed to Charles Chike Anikwue et ux by deed dated December 14, 1981, recorded in Book 1156, Page 23, Halifax Public Registry. Reference to said map and deed is hereby

made for greater certainty of description.

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TRACT THREE: That certain tract or parcel of land lying and being situated in the City of Ranoke Rapids, Roanoke Rapids Township, Halifax County, North Carolina, and being more particularly described as follows: BEGINNING at a point on the edge of the right of way for Still Forest Place, said beginning point being the southeast corner for Lot No. 104 and the northwestern corner for Lot No. 105, according to plat showing Part I, Section 7, Becker Farms owned by Becker Farms, Inc, by Cyril C. Waters, R.S. of record in Map Book 15, Page 64, Halifax Public Registry; thence from said beginning point along the original lot line between Lots 104 and 105 N. 55° 15' E. 116.7 feet to a point; thence S. 36° 07' E. 10 feet to a point; thence along a new made line S. 57° 44' W 116.9 feet to a point along the edge of the right of way for Still Forest Place five (5) feet in a northwesterly direction along a curve to the left having a radius of fifty feet to the point of beginning, and containing 874 square feet according to a plat titled "Plat Showing Property Conveyed to Charles Chike Anikwue and wife, Faye Miller Anikwue by Marvin Lasaiter, Jr." dated December 19, 1990, and done by Cryil C. Waters, R.S. reference to said plat being hereby made for greater certainty of description